

(2010) 10 DEL CK 0252

In the Delhi High Court

Case No : Writ Petition (C) 16722 of 2006

Lt. Col. Nafe Singh Bhardwaj

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2010) 10 DEL CK 0252

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Jitendra Mohan Sharma and Sandeep Malik, for the Appellant; Sanjay Poddar, for R-1 and 2 and Baankey Bihari Sharma, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner by this writ petition filed in September, 2006 seeks a direction to the respondents to allot alternative plot to the petitioner as per the Policy in Delhi, in lieu of land of the petitioner acquired by the Land and Building Department of the Government of Delhi.

2. It is not in dispute that the land of the petitioner was acquired vide notification dated 13th December, 1981 u/s 4 of the Land Acquisition Act, 1894 and the award was announced on 22nd September, 1986 and the petitioner received the entire compensation amount on 5th November, 1986. The petitioner made a representation for an alternative plot. It is also not in dispute that the said representation of the petitioner was rejected vide order dated 6th November, 1987.

3. The petitioner, in the writ petition filed in the year 2006 has not sought quashing of the order dated 6th November, 1987 rejecting his application for alternative land. In my opinion, without the petitioner seeking quashing of the order vide which, relief with respect to which mandamus is claimed in this writ

petition was denied to the petitioner, the writ petition is not maintainable.

4. The respondents in their counter affidavit have taken a plea that the writ petition filed after more than 19 years of the rejection of the representation of the petitioner for alternative plot, is barred by laches, waiver and acquiescence.

5. The petitioner in the writ petition has not given any explanation for the said long delay save for pleading that the petitioner after 6th November, 1987 continued to represent till 1997; that after a gap of about 8 years, he again applied for alternative plot in the year 2005 and whereafter the present writ petition was filed in September, 2006.

6. However the petitioner in rejoinder, in response to the plea of the respondents of the writ petition being barred by time has averred that there is no delay and laches in filing the writ petition because the petitioner had been representing from time to time. He as annexure-P-22 to the rejoinder has also filed a list of persons, recommendation for allotment of alternative plot to whom were made long after the acquisition of their land. However, the respondents have had no occasion to deal with the said plea of the petitioner taken in rejoinder for first time.

7. The respondents have relied upon the judgment dated 4th September, 2002 of the Division Bench of this Court in Civil Writ Petition No. 4160/2000 titled Charat Singh v. Govt. of NCT of Delhi. The Division Bench in that case held that the petitioners in that case having failed to challenge the order dated 19th March, 1993 of rejection of their request for alternative allotment, the mere act of making further representations would not given them a fresh cause of action and the delay of seven years in preferring the writ petition was held long enough to decline the discretionary relief to the petitioners in that case. The counsel for the respondents has urged that when the Division Bench dismissed the writ petition for similar relief as in this case on account of delay of seven years, the question of entertaining this writ petition after a delay of nineteen years does not arise.

8. Reference is also made to the judgment dated 20th September, 2010 of the Chief Justice's Bench of this Court in LPA No. 674/2010 titled Mange Ram v. Delhi Development Authority where also a writ petition claiming alternative plot filed after long delay was dismissed holding that it was in the realm of speculation and not in the sphere of reality and the petitioner could not get the state claim alive after five decades.

9. The counsel for the respondents has also relied upon the judgment of another Division Bench of this Court in Sunder Singh v. Union of India 2009 (108) DRJ 96 where also the writ petition for alternative plot in lieu of acquired land preferred after long delay, was dismissed as barred by laches holding that the scheme for the alternative plots was introduced to provide for the actual and urgent need for proper accommodation of those whose land has been acquired and the delay in preferring the writ petition showed that there was no need.

10. Though in the present writ petition, it cannot be said that the petitioner had applied for alternative plot after long delay, inasmuch as the representation for alternative plot was made simultaneously with receipt of compensation but the petitioner in spite of being unequivocally told on 6th November, 1987 that he was not eligible or entitled, sat over his rights for nineteen years before approaching this Court. There was a complete hiatus in between the years 1988 and 2005 in the representations even being made by the petitioner.

11. The petitioner has made detailed pleadings of his illustrious service in Armed Forces but according to the petitioner himself he retired from the Armed Forces in 1998; even if it were to be believed that the petitioner from 1987 to 1998 owing to his services was unable to prefer this writ petition, there is no explanation for the delay of eight years after 1998. Repeated representations of the petitioner cannot revive the rights of the petitioner which have become barred by time or on account of laches, waiver and acquiescence. Reference can also be made to Karnataka Power Corporation Limited through its Chairman and Managing Director and Another Vs. K. Thangappan and Another, . What has been held by the Division Bench in Sunder Singh qua the element of urgency in such relief, is equally applicable for the delay even after rejection of the representation.

12. Another aspect of the matter, having a bearing on the matter may also be noted. The representation of the petitioner was rejected on 6th November, 1987 owing to the reason that as per the Policy, entitlement for consideration for alternative plot was only on satisfying inter alia the twin condition that the land was acquired for planned development of Delhi and was placed at the disposal of DDA. It is admitted position that the acquisition of the land of the petitioner was neither for planned development of Delhi nor was the land placed at the disposal of DDA. The acquisition of the land of the petitioner was for the construction of a supplementary drain by the Public Works Department. It is however further admitted that the original purpose of construction of supplementary drain, was given up by Delhi Administration even before the award was made and the acquired land was transferred to the DDA for developing the land under the Planned Development of Delhi Scheme. The petitioner after rejection on 6th November, 1987 of his claim for alternative plot represented first on the ground that his land should be de-notified since original purpose of acquisition had lapsed and subsequently on the basis of the order dated 14th July, 1987 of the Delhi Administration to the effect that "in future all lands including lands acquired for non-plan purposes will be acquired through the DDA" and "DDA will allot alternative plots against the acquired land". However the said order dated 14th July, 1987 itself provided that the same was only prospective and not retrospective. The petitioner however represented that since his land had nevertheless been transferred to DDA for planned development, he should be given the benefit of the order dated 14th July, 1987. However the said request of the petitioner was also rejected on 7th July, 1994. The writ petition was filed after twelve years from the said date also.

13. The petitioner has also filed an application for filing additional documents. The petitioner along with the said application has filed notings from the files of the Land and Building Department indicating that the land was transferred to the DDA for planned development after 14th July, 1987 and in which notings some officials were of the view that the petitioner was entitled to alternative allotment. The counsel for the petitioner on the basis thereof has contended that since the land was transferred to the DDA post order dated 14th July, 1987, even if the said order was to be not retrospective, the petitioner would be covered by the said order.

14. However the fact remains that the rejection of the request of the petitioner on this ground, was also communicated to the petitioner in the year 1994 and the petitioner remained quiet for twelve years thereafter. The petitioner did not show any haste in approaching this Court. The writ petition in the light of the judgments aforesaid of the Division Bench of this Court cannot be held to be maintainable and is held to be barred by laches.

15. Even though the aforesaid finding is sufficient for dismissal of the writ petition but for complete adjudication it is deemed expedient to deal with the case on merits. The counsel for the respondents has invited attention to the judgment dated 4th September, 2008 of another Division Bench of this Court in W.P. (C) No. 2349/1988 titled Mehar Chand v. Union of India which also though ultimately dismissed the writ petition for alternative plot on the ground of laches, the delay in that case being of thirteen years, but also discussed the law relating to alternative allotment. The counsel for the respondents has urged that the DDA (Disposal of Developed Nazul Land) Rules, 1981 provide for allotment of alternative plots to those whose land has been acquired. The Full Bench of this Court in Ramanand v. UOI AIR 1994 Delhi 29 held that there was no absolute right to allotment and there was merely a right to be considered for allotment. It was also held that delay was a relevant factor. As per the Policy of the year 1987 only those whose land was acquired for Planned Development of Delhi and whose land was placed at the disposal of DDA were entitled to be considered for allotment. The petitioner admittedly does not meet the said criteria also. The subsequent vesting of the land in DDA would not make any difference. No error is thus even otherwise found in the decision rejecting the claim of the petitioner.

16. There is thus no merit in the writ petition, the same is dismissed. Though the Single Judge against whose order intra Court appeal in Mange Ram (supra) was preferred had imposed a cost of Rs. 1,00,000/- while dismissing a similar writ petition, I refrain from imposing any costs.